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Attorneys For Defendants
TECHNICHEM, INC., MARK J. NG, and STEPHEN S. TUNG

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

VIRGINIA PELLEGRINI, Trustee of the
Mario J. and Virginia E. Pellegrini Trust,
and VIRGINIA PELLEGRINI, an
individual,

Plaintiff,

vs.

TECHNICHEM, INC., a California
corporation, MARK J. NG, an
individual; STEPHEN S. TUNG, an
individual,

Defendants.

CASE NO. 07-CV-02497-CRB

**JOINT CASE MANAGEMENT
STATEMENT**

Courtroom: 8, 19th Floor
Judge: Charles R. Breyer

Complaint filed: May 9, 2007
Trial Date: **

CMC Date: October 5, 2007
Time:

The parties file this Joint Case Management Statement pursuant to
Civil Local Rule 16-9 and the "Standing Order For All Judges Of The Northern
District of California – Contents of Joint Case Management Statement."

Respective counsel for the parties held a meeting to confer on all
issues on August 15, 2007. William D. Wick and Anna L. Nguyen attended on
behalf of Plaintiffs Virginia Pellegrini, Trustee of the Mario J. and Virginia E.
Pellegrini Trust, and Virginia Pellegrini, an individual (collectively, "Plaintiffs").
Brian M. Ledger and Paul A. Henreid attended on behalf of defendants
Technichem, Inc., Mark J. Ng, and Stephen S. Tung (collectively, "Defendants").

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1 1. Jurisdiction and Service: The court has subject matter jurisdiction
2 because Plaintiffs' claims involve various federal questions. No issues exist
3 regarding personal jurisdiction. Venue is proper. No parties remain to be served.
4

5 2. Facts: Plaintiffs filed the complaint on May 9, 2007, alleging that
6 Defendants operated a chemical recycling business on Plaintiffs' property in
7 Oakland, California that caused the release of hazardous substances, including but
8 not limited to perchloroethylene ("PCE"). As a result, Plaintiffs claim they have
9 been unable to sell or lease the property, incurred environmental investigation
10 expenses and legal fees, and will have to pay for future cleanup to satisfy the
11 requirements of the State of California, Department of Toxic Substances Control
12 ("DTSC"). Plaintiffs seek injunctive relief to force Defendants to remediate the
13 contamination, and want Defendants to indemnify them for their costs, including
14 attorneys' fees.

15 The factual issues relate to liability, the extent of environmental
16 contamination, costs of remediation, and other damages alleged in the complaint.
17

18 3. Legal Issues:

19 A. Plaintiffs' Statement

20 The legal issues that arise with respect to environmental contamination
21 caused by Defendants include: breach of warranties, negligence, fraud, duty to
22 disclose, failure to maintain the leasehold, and the scope of remediation.

23 B. Defendants' Statement

24 In addition to those identified by Plaintiffs, Defendants identify the
25 following legal issues: Whether the complaint states the circumstances
26 constituting fraud or mistake "with particularity." Fed. R. Civ. P. 9(b). Whether
27 Plaintiffs have standing to assert a claim under CERCLA § 107(a) when they are
28 the current owners and operators of the facility. Whether Plaintiffs are entitled to

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attorneys' fees under California Code of Civil Procedure § 1021.6. Whether a separate cause of action for waste exists under California law. Whether Plaintiffs can assert a claim under California Business & Professions Code § 17200 for a violation of California Health and Safety Code § 25359.7(b). Whether Plaintiffs can assert a violation under California Health and Safety Code § 25249.7(b) when Plaintiffs have not served a Proposition 65 notice and have not asserted a separate Proposition 65 claim. Whether Plaintiffs' claims for future costs of investigation and remediation are premature or speculative.

4. Motions: Defendants anticipate filing a Motion To Dismiss For Failure To Plead Fraud With Particularity Under FRCP 9(b). Further, Defendants anticipate that, depending upon the results of an investigation and discovery, Defendants may file a motion for partial summary judgment, and a motion for judgment on the pleadings. The subjects of the motions may include, without limitation, plaintiff's failure to comply will notice provisions of the statutory claims for relief, primary jurisdiction, and the subjects of some other affirmative defenses.

5. Amendment of Pleadings:

A. Plaintiffs' Statement

Plaintiffs do not anticipate filing any motions to add parties, add claims, or amend pleadings. Plaintiffs propose the following deadline for amending the pleadings: November 5, 2007.

B. Defendant' Statement

Defendants are just beginning investigation and discovery. If investigation and discovery disclose that third parties not currently named in this matter caused or contributed to the release of hazardous substances on or under the Plaintiffs' property, Defendants will seek leave to file a third party complaint against those

1 parties. Defendants do not anticipate filing any other motions to add parties, add
2 claims, or amend pleadings. Defendants propose the following deadline for
3 amending the pleadings: Monday, December 21, 2007.

4
5 6. Evidence Preservation: The parties have been advised by their
6 counsel to preserve evidence relevant to the issues reasonably evident in this
7 action, including interdiction of any document-destruction program and any
8 ongoing erasures of e-mails, voice mails, and other electronically-recorded
9 material.

10
11 7. Disclosures: Both parties have complied with the initial disclosure
12 requirements of Rule 26(a) of the Federal Rules of Civil Procedure by serving
13 Initial Disclosure Statements and Initial Disclosure documents concurrently via
14 electronic discs by August 28, 2007.

15
16 8. Discovery:

17 In Paragraph 17, the parties submit individually proposed discovery plans
18 pursuant to Fed. R. Civ. P. 26(f).

19
20 A. Plaintiffs' Statement

21 This case has not been designated as complex litigation, and is in fact, a
22 relatively simple case involving contamination of property by the tenants. It is not
23 a multi-party contaminated case. Plaintiffs never conducted any operations on the
24 property and did not use PCE or other hazardous substances. Defendants did
25 conduct operations on the property, and did use PCE and other hazardous
26 substances. Therefore, the scope and extent of discovery should be governed by
27 the Federal Rules of Civil Procedure. Any modification to the federal rules of
28 discovery, including but not limited to any expansion on the number of requests for

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1 production of documents, interrogatories, or depositions, must be obtained by
2 stipulation of the parties or upon noticed motion with leave of court.

3 B. Defendants' Statement

4 Other than initial disclosures, there has been no discovery to date.
5 Defendants have requested the DTSC produce all of its files for this site. The
6 DTSC has indicated that it has 6-8 bankers boxes of documents for the site, which
7 Defendants are in the process of reviewing. Defendants anticipate that virtually all
8 these documents will be analyzed by the parties' attorneys and experts to prepare
9 for deposition and expert reports. Defendants anticipate that these documents will
10 identify further percipient witnesses that will need to be deposed that are unknown
11 at this time. Defendants anticipate that all named individuals will be deposed.
12 Defendants further anticipate the need for the depositions of numerous personnel
13 employed by the DTSC and by environmental consultants that have performed
14 work at the site.

15 Both the liability and damages aspects of this case present technical
16 issues involving the cause and migration of contamination and the methods and
17 costs of investigating and remediation, thus compelling the parties to present
18 expert witnesses. Defendants anticipate that Plaintiffs and Defendants will have up
19 to four experts each. These experts may need to work with thousands of pages of
20 historical and technical documents produced during the non-expert discovery
21 phase, and the deposition transcripts of the percipient witnesses, in preparing their
22 expert reports and presenting their own deposition testimony.

23 Given that Plaintiffs have asserted twenty complicated environmental
24 claims, including twenty separate items under Plaintiffs' Prayer for Relief,
25 Defendants request the right to expand the number of interrogatories permitted to a
26 total of 150. Defendants do not currently propose any modification to the limit of
27 10 percipient witness depositions; however, depending upon the result of discovery
28 and investigation, Defendants anticipate the possibility that more than 10

1 percipient witness depositions may be needed.

2 Defendants submit the dates below as part of the proposed discovery plan
3 pursuant to Fed. R. Civ. P. 26(f).

4
5 9. Class Actions: Not applicable.

6
7 10. Related Cases: None, except administrative proceedings still pending
8 before the DTSC.

9
10 11. Relief: Plaintiffs seek various reliefs, including but not limited to
11 cleanup costs, damages, declaratory and injunctive relief, restitution, attorneys'
12 fees and experts' costs as a result of environmental contamination caused by
13 Defendants. Given the early stage of the lawsuit, Defendants cannot determine
14 how damages should be calculated if liability is established.

15
16 12. Settlement and ADR: The parties have agreed to an Early Neutral
17 Evaluation (ENE) in compliance with ADR L.R. 3-5. The ENE conference is
18 expected to be completed by November 20, 2007. Brian S. Haughton, Esq. is the
19 Evaluator. Defendants believe that discovery may be necessary to determine the
20 extent and cause of the contamination in order to potentially negotiate a resolution.

21
22 13. Consent to Magistrate Judge For All Purposes: Plaintiffs have already
23 opposed and continues to oppose having a magistrate judge conduct all further
24 proceedings including trial and entry of judgment. Plaintiffs have not consented to
25 a magistrate judge.

26
27 14. Other References: The case is not currently suitable for reference to
28 binding arbitration, a special master, or the Judicial Panel on Multidistrict

1 Litigation.

2 15. Narrowing of Issues: Defendants intend to file a motion to dismiss
3 Plaintiffs' fraud claim and to strike Plaintiffs' request for punitive damages, which
4 would narrow the issues, if granted.

5
6 16. Expedited Schedule: This is not the type of case that can be handled
7 on an expedited basis with streamlined procedures.

8
9 17. Scheduling:

10 To cover the next phase of this litigation, the parties individually submit the
11 following proposed scheduling order:

	Plaintiffs' Proposed Dates	Defendants' Proposed Dates
▪ Last day to add new claims/parties:	November 5, 2007	December 21, 2007
▪ Non-expert discovery cutoff:	February 28, 2008	June 2, 2008
▪ Non-expert discovery motion cut-off:	March 30, 2008	July 1, 2008
▪ Expert witness disclosure and exchange of expert reports:	April 15, 2008	August 1, 2008
▪ Rebuttal witness disclosure and exchange of rebuttal expert reports:	May 30, 2008	September 15, 2008

▪ Expert witness discovery cutoff:	July 15, 2008	November 1, 2008
▪ Law and motion cutoff:	August 15, 2008	December 15, 2008
▪ Final Pre-Trial Conference:	September 15, 2008	February 15, 2009
▪ Trial:	October 1, 2008	April 1, 2009

18. Trial: The case will be tried to a jury. Plaintiffs expect the trial to last 3-5 days. Defendants expect the trial to last approximately 12 days.

19. Disclosure of Non-party Interested Entities or Persons: The parties both filed the “Certification of Interested Entities or Persons” as required by Civil Local Rule 3-16. Plaintiffs did not identify any non-party interested entities or persons. Defendants identified Zurich North America as a liability insurance carrier that may have either i) a financial interest in the subject matter in controversy or in a party to the proceeding, or ii) a non-financial interest in the subject matter or in a party that could be substantially affected by the outcome of this proceeding.

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1 Dated: September 27, 2007

GORDON & REES LLP

2
3 By: 

Brian M. Ledger

4 Paul A. Henreid

5 Attorneys for Defendants

6 Technichem, Inc.; Mark J. Ng; and

7 Stephen S. Tung

8
9 Dated: September 27, 2007

WACTOR & WICK LLP

10
11
12 By: 

13 William D. Wick

14 Anna L. Nguyen

15 Attorneys for Plaintiffs

16 Virginia Pellegrini, and Virginia

17 Pellegrini, Trustee of the Mario J. and

18 Virginia E. Pellegrini Trust